DR JUMIATI ISMAIL v. UNIVERSITI TEKNOLOGI MARA (UITM) & ANOR

HIGH COURT MALAYA, SHAH ALAM
JULIE LACK JC
[CIVIL SUIT NO: BA-21NCVC-62-08-2018]
9 APRIL 2022

Abstract – *(i) When there is a reasonable basis for an employee to believe that she only has to fulfil a certain requirement in order to be released from her bond, a legitimate expectation has been created on the part of the employee that her employer had consented for her to go on an optional retirement; more so, when the requirement, being the sum of monies, had been paid to the employer and the employer acknowledges receipt of such payment. (ii) A statutory authority that makes available to its employees the option to retire early, must communicate its rejection of such application, especially when it is made after the basic and only requirement to be satisfied for the fulfilment of the option, had been met by the said employee.*

LABOUR LAW: *Wrongful dismissal – Claim – Declaratory reliefs and damages – Employee opted for early retirement due to health reasons – Employer informed employee of requirement to pay sum of RM30,000 to break scholarship bond – Employee paid sum and employer acknowledged receipt of payment of sum – Employee still required to report for work and disciplinary proceedings initiated against employee – Employee found guilty of charges and terminated from service – Employee lost right to pension, gratuity and golden handshake – Whether employee was entitled to apply for optional retirement – Whether decision to dismiss employee valid and correct – Whether decision complied with procedure laid down in Statutory Bodies (Discipline and Surcharge) Act 2000*

The plaintiff sought declaratory reliefs and damages against the defendants for wrongful dismissal of her tenure as a lecturer, arising from the decision of the first defendant's staff disciplinary committee and the disciplinary appeals committee, respectively, against her for her failure in reporting for work when ordered to do so. The plaintiff's last posting was as the Director of Education Malaysia-Australia in the Ministry of Higher Education based at the Malaysian-Consulate in Australia. The plaintiff had applied to go on an optional retirement to the first defendant, citing her failing eyesight and health issues as the reasons. The first defendant advised the plaintiff to re-apply citing, *inter alia*, her scholarship bond with them as well as the short notice given. In compliance with the defendant's request, the plaintiff re-applied and this was duly acknowledged by the first defendant. The defendant informed the plaintiff of the options available to her should she

wish to leave their service, chief among which, was the requirement for her to pay the sum of RM30,000 to break her scholarship bond with them. The plaintiff informed the first defendant that she still wished to retire early and was therefore willing to pay the sum of RM30,000 to release herself from the scholarship bond. The plaintiff received an email from the defendant that her case had been referred to the Integrity Unit for further action since she failed to report back for duty as directed. The plaintiff still stood by her decision to take optional retirement but the defendant again directed her to report for duty. The plaintiff did not do so and proceeded to pay the sum of RM30,000 to which the first defendant acknowledged the receipt of the payment. Despite accepting the payment of RM30,000 from the plaintiff, the first defendant initiated disciplinary proceedings against her for failing to report for duty. The plaintiff was subjected to two charges for: (i) the failure to report for work; and (ii) the absence from work without permission and/or without any reasonable excuse. A disciplinary hearing was carried out and the plaintiff was found guilty of the two charges. The first defendant terminated the plaintiff's service. The plaintiff appealed against the decision and sought a review of the decision to terminate her employment service. The disciplinary appeals committee confirmed the decision to terminate the plaintiff's service. As a result, the plaintiff lost her right to pension, gratuity and golden handshake. The issues that arose were: (i) whether the plaintiff was entitled to apply for an optional retirement; and (ii) whether the first defendant's staff disciplinary committee and disciplinary appeals committee's decision to dismiss the plaintiff was valid, correct and complied with the procedure laid down in Statutory Bodies (Discipline and Surcharge) Act 2000 ('Act').

Held (allowing claim):

(1) The first defendant confirmed that they received and accepted the sum of RM30,000 paid by the plaintiff to them. As far as the plaintiff was concerned, having received the sum meant that there was no impediment to her application for optional retirement. There was a reasonable basis for the plaintiff to come to the belief that she only had to repay the sum of RM30,000 in order for her to be released from her bond, which would then pave the way for the first defendant to give its consent for her to go on an optional retirement. A legitimate expectation on the part of the plaintiff had been created as she had set her heart on taking the optional retirement not for any frivolous reasons but for legitimate reasons, being her failing eyesight and health issues. The first defendant had committed itself to agree to release her if the said sum was received and the plaintiff had acted on that representation. There were sufficient grounds to invoke the doctrine of legitimate expectation in favour of the plaintiff. (paras 44, 47 & 62)

(2) The first defendant failed to adhere to the requirements found in reg. 24(1) of Part III of the Second Schedule of the Act which required the head of department ('HOD') to send in a report as soon as possible, together with the facts and dates and circumstances of such absence from work as well as any further information to the appropriate disciplinary complaint. The first defendant was under a duty to act fairly. The plaintiff's HOD had, instead of sending the facts, dates and circumstances of the plaintiff's absence from work, as required under the particular regulation, endorsed her support of the letter of application by the plaintiff for optional retirement. The first defendant did not take this fact into consideration but had proceeded to take out disciplinary action against the plaintiff. The letter of support by the plaintiff's HOD showed that that she was fully aware and consented to the plaintiff's reasons why she had not reported for work. (para 69)

(3) There was ample evidence to show that the directive to the plaintiff to report back to work was not properly sent out to the plaintiff. Regulation 25 of the Act provides that an officer who is missing for seven consecutive working days and cannot be traced can be dismissed without a trial but subject to a couple of procedures: (i) the letter directing the plaintiff to report back for duty must be sent by personal delivery or AR registered post by the HOD to the officer's last known address; and (ii) the disciplinary committee shall publish a notice in one daily newspaper in Bahasa Malaysia, requiring the officer to report for duty within seven days. The first defendant's witness ('DW2') agreed that she had merely sent an email the letter directing the plaintiff to report back for work. The plaintiff was not properly served with the notices directing her to report back for duty. DW2 also admitted that the first defendant went ahead with taking disciplinary action against the plaintiff even though they did not receive any complaint or report from her own HOD. (paras 78-80)

(4) The plaintiff had not been notified of the decision of the disciplinary appeal committee immediately. There was thus non-compliance with reg. 23 under Part II of the Third Schedule to the Act. Clearly, the plaintiff had given reasons for her failure to report back for work. She had given justifications and the disciplinary committee failed to consider the reasons. There was breach of natural justice in subjecting the plaintiff to the harshest punishment when she had submitted reasonable cause for her failure to report for work. The defence of legitimate expectation was not taken into account at all by the disciplinary committee. The plaintiff had proven she had reasonable cause for her failure to report for work and for her absence from work. The dismissal by the first defendant was wrongful and the plaintiff was entitled to seek a declaration that the decision of the disciplinary appeals committee was invalid and of no effect. (paras 96 & 98)

(5) The plaintiff ought to be allowed to opt for early retirement and the first defendant was estopped from refusing to process the application as the plaintiff had complied with the condition given. The plaintiff was therefore entitled to the declaration that she be given a pension, gratuity and golden handshake calculated as if the plaintiff had retired on 31 August 2014. (paras 98 & 106)

Case(s) referred to:
Asa'ari Muda v. Kerajaan Malaysia & Ors [2006] 3 CLJ 753 CA ***(refd)***
Darahman Ibrahim & Ors v. Majlis Mesyuarat Kerajaan Negeri Perlis & Ors [2008] 4 CLJ 538 CA ***(refd)***
Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98 FC ***(refd)***
Dato' Raja Ideris Raja Ahmad & Ors v. Teng Chang Khim & Ors [2012] 2 CLJ 288 CA ***(refd)***
Datuk Justine Jinggut v. Pendaftar Pertubuhan [2012] 1 CLJ 825 CA ***(refd)***
Mohamad Hassan Zakaria v. Universiti Teknologi Malaysia [2017] 10 CLJ 36 CA ***(refd)***
Perbadanan Pengurusan Trellises & Ors v. Datuk Bandar Kuala Lumpur & Ors [2021] 2 CLJ 808 CA ***(refd)***

Legislation referred to:
Federal Constitution, art. 132(1)
Specific Relief Act 1950, s. 41
Statutory And Local Authorities Pensions Act 1980, ss. 3(1), 12(1)
Statutory Bodies (Discipline and Surcharge) Act 2000, Second Schedule regs. 3(2)(g), (i), 23, 24(1), 25, Third Schedule reg. 23

For the plaintiff - Latheefa Koya & Muhammad Zulfaqar Zikry Wahidir; M/s Shukor & Assocs
For the 1st defendant - Nur Sabihah Shukri; M/s Yusfarizal, Aziz & Zaid
For the 2nd defendant - Noor Atiqah Zainal Abidin; FC

Reported by Lina E

JUDGMENT

Julie Lack JC:

Introduction

[1] This is an action filed by the plaintiff seeking declaratory reliefs and damages against the defendants for wrongful dismissal of her tenure as a lecturer arising from the decision of the first defendant's staff disciplinary committee (jawatankuasa tatatertib kakitangan) dated 18 December 2015 and the disciplinary appeals committee (jawatankuasa rayuan tatatertib) dated 1 June 2017 respectively against her for her failure in reporting for work when ordered to do so.

[2] As a result of the disciplinary action the plaintiff who was a lecturer for almost 34 years, most of which was spent in the service of the first defendant, lost her right to pension, gratuity and golden handshake.

[3] After a full trial, this court allowed the plaintiff's claim with costs. The reasons for that decision are set out below.

Background Facts

[4] The facts have been comprehensively set out by the parties in their submissions. I can do no better than to adopt the factual matrix from those submissions subject to some modifications.

[5] The plaintiff joined the service of the first defendant on 26 May 1980 as an Assistant Registrar. She left its service on 11 July 1982 in order to pursue further studies under its skim tenaga pengajar muda, ITM. Thereafter she re-joined the first defendant as a lecturer on 28 July 1986.

[6] Her last posting was as the Director of Education Malaysia-Australia in the Ministry of Higher Education based at the Malaysian Consulate in Australia. The position was a secondment from the first defendant to the Ministry of Higher Education. At the material time, she held a Grade 52 (open) position.

[7] The plaintiff first applied to go on optional retirement through her letter to the first defendant dated 13 December 2013. The first defendant replied *via* email on 15 January 2014, advising her to reapply citing *inter alia* her scholarship bond with them as well as the short notice given.

[8] In compliance with that request the plaintiff applied for the second time on 21 February 2014. On 13 June 2014, the first defendant wrote to the plaintiff acknowledging her application and informed the plaintiff of the options that were available to her should she wish to leave their service, chief among which was the requirement for her to pay the sum of RM30,000 to break her scholarship bond with them.

[9] In response, the plaintiff wrote to the first defendant's legal advisor *via* an email dated 3 July 2014 enclosing her letter dated 30 June 2014 and informed the first defendant that she still wished to retire early and was therefore willing to pay the sum of RM30,000 in order to release herself from the scholarship bond.

[10] On 9 September 2014, the plaintiff received an email from the first defendant informing her that her case had been referred to the integrity unit for further action since she failed to report back for duty as directed.

[11] On 29 September 2014, the plaintiff replied informing the first defendant that she had appointed a solicitor to represent her and that she stood by her decision to take optional retirement.

[12] The first defendant again wrote to her on 3 October 2014 directing her to report for duty but the plaintiff did not do so.

[13] On 10 December 2014, the plaintiff paid the sum of RM30,000 and on 13 February 2015, the first defendant acknowledged the receipt of the said payment.

[14] Despite accepting the payment of RM30,000 from the plaintiff, the first defendant initiated disciplinary proceedings against her for failing to report for duty to the first defendant.

[15] The plaintiff was subjected to two charges:

(i) failure to report for work on 31 August 2014; and

(ii) absence from work without permission and/or without any reasonable excuse from 2 September 2014.

[16] Disciplinary hearing was carried out and the plaintiff was found guilty of the said two charges. The first defendant informed the plaintiff of the decision and terminated her service with effect from 18 December 2015.

[17] The plaintiff appealed against that decision and sought a review of their decision to terminate her employment service.

[18] On 1 June 2017, the first defendant informed the plaintiff that the disciplinary appeals committee had held a hearing and confirmed its decision to terminate her service.

The Trial And The Witnesses

[19] During the trial the plaintiff called two witnesses including herself whereas the first defendant called five witnesses. The second defendant called only one witness before the defence closed its case.

[20] It will be relevant to put on record here that the second defendant is not the employer of the plaintiff. The plaintiff was employed by the first defendant. The first defendant paid her salary. The second defendant's role would only come into play after the first defendant has processed and certified the plaintiff's application for early retirement and submitted the relevant documentation to be processed by the second defendant. Only after this has been carried out will the JPA be able to approve the application to optionally retire.

[21] In her evidence before the court, the plaintiff explained that she was in poor health in 2014. She was heavily diabetic which affected her eyesight and made it difficult for her to work. Her ill health was compounded by personal family problems and thus she made the decision to apply for optional retirement and duly informed the first defendant by way of letter that she wished to retire.

[22] SP1 stated that she was surprised to receive the email dated 9 September 2014 from the first defendant informing her that she had failed to report for duty on 2 September 2014 as directed and that her case had been

referred to the integrity unit for commencement of disciplinary action. She said that she had all the while been in regular contact with the first defendant's staff and officers in order to settle her case and they knew her ill health was the reason for her application. She stated that her eyesight had deteriorated to the point that she was almost blind and this was unquestionably debilitating not only in her personal life but in her career where reading and marking students' papers are part and parcel of a lecturer's daily duties. The first defendant's representatives were fully aware of her reasons as to why she felt she had no choice but to opt for early retirement. Furthermore, the plaintiff said she had already informed the first defendant that she was willing to pay the said sum *in lieu* of breaching the scholarship bond.

[23] The plaintiff claimed that the first defendant's letters reached her late as it was addressed to her in Australia when they knew that she had already returned to Malaysia. However, the plaintiff proceeded to appeal to the first defendant by way of letter dated 26 October 2015 requesting them to reconsider their decision, reiterating her wish to proceed with optional retirement. The plaintiff felt aggrieved that her application for early optional retirement was rejected without any reasons when she had tried to fulfil all that was required of her so that she could be allowed to go for early retirement.

[24] The plaintiff said she attended a meeting with the first defendant's officers and representatives on 22 April 2015 to discuss and to resolve her problem.

[25] Her expectations were dashed when she was found guilty of the two charges against her and consequently was dismissed from her post with effect from 18 December 2015. The plaintiff was informed of the decision *via* letter and she was informed of her right to appeal against the said decision within 14 days from receipt of the decision.

[26] The plaintiff claimed that the letter informing her of her dismissal was incorrectly addressed and hence she only received it on 29 January 2016. By then her right to appeal within 14 days had lapsed.

[27] It transpired that sometime in September 2016 the plaintiff learned the first defendant was still waiting for her to appeal against the decision of the disciplinary committee made earlier.

[28] The plaintiff learned from an inside source that a meeting had been called between the first and second defendant and SPRM to discuss her case. She was also informed that the pensions department was awaiting the outcome of any appeal she wished to pursue.

[29] With her hopes raised the plaintiff made a last final appeal against the decision of the staff disciplinary committee's decision on 18 December 2015 *via* her letter of appeal dated 26 September 2016.

[30] To her dismay, her appeal was dismissed by the disciplinary appeals committee eight months later on 1 June 2017. The plaintiff's last avenue of appeal had been exhausted hence she resorted to the civil court to seek justice for herself.

[31] The first defendant in its defence has stated that they acted reasonably and in accordance with correct procedure. All the four witnesses called by the first defendant testified that they had complied with the requirements that was necessary in accordance with the provisions of the Statutory Bodies (Discipline and Surcharge) Act 2000 (Act 605) and the Pekeliling Perkhidmatan Bil. 4 Tahun 2003.

Evaluation And Findings Of This Court

[32] The issues arising from this case centre mainly upon the question as to whether the plaintiff was entitled to apply for optional retirement and whether the first defendant's staff disciplinary committee and disciplinary appeals committee decisions on 18 December 2015 and 1 June 2017 to dismiss the plaintiff was valid, correct and whether it had complied with the procedure laid down in Act 605.

[33] In this matter, the plaintiff was terminated from her services on charges of purportedly not reporting for work and for being absent without leave. These were the only charges that were levelled against her. Any reference to the SPRM complaint against her does not form the basis for the termination of her service. The witnesses testifying on behalf of the first defendant had themselves agreed that the charges against the plaintiff did not include the SPRM complaint. The witnesses also confirmed that the first defendant relied on the provisions of the Statutory Bodies (Discipline and Surcharge Act 2000) (Act 605) in regard to the procedure to bring disciplinary action against the plaintiff.

Is The Plaintiff Entitled To Optional Retirement

[34] It will be a pertinent point to note that optional retirement for employees of statutory bodies such as the plaintiff is governed by what is found in the Statutory And Local Authorities Pensions Act 1980, namely ss. 12(1) and 3(1).

Section 12(1) states as follows:

> Optional retirement
>
> 12. (1) An appropriate authority may, with the approval of the pensions authority on the employee's application, consent to the retirement of an employee on or after attaining the age of forty years.

Whereas s. 3(1) states as follows:

> No employee shall have an absolute right to compensation for past service or to any pension, gratuity or other benefit under this Act.

[35] Therefore, before a person may be granted optional retirement with pensionable benefits, there must be consent by the responsible and appropriate authority.

[36] In *Mohamad Hassan Zakaria v. Universiti Teknologi Malaysia* [2017] 10 CLJ 36, the Court of Appeal observed as follows:

> The appellant's application for the respondent's consent under s. 12(1) of the Statutory and Local Authorities Pensions Act 1980 is not merely a matter of opting to retire at a date earlier than the appellant's compulsory date of retirement. Retirement is almost wholly related to the matter of pensions, and pensions is clearly not a right conferred on the appellant ...

[37] In the earlier case of *Asa'ari Muda v. Kerajaan Malaysia & Ors* [2006] 3 CLJ 753; [2006] 1 MLRA 854 the court found as follows:

> [4] I find the plaintiffs' claim to be without merits, as did the learned trial judge, Abdul Hamid Said J, a judge with much experience in service matters. Here you have a case where the Board was acting entirely within its statutory powers. Second, the claim to an absolute right to a pension is misconceived. For s. 3(1) of the Pensions Act 1980 expressly says that "No officer shall have an absolute right to compensation for past service or to any pension, gratuity or other benefit under this Act.

[38] From the above authorities cited it followed that the whole tenor of the legislation was permissive *ie*, the relevant authority is merely authorised and not compelled by the legislature to pension benefits.

[39] In this case, the first defendant *via* its jawatankuasa hal ehwal kakitangan UiTM was the authority responsible for giving its consent to any application by its employees for optional retirement.

[40] It was thus the contention of the first defendant that the plaintiff was not entitled as of right to approval of her application for optional retirement. By the use of the word "may" instead of "shall" it is clear that Parliament did not intend for optional retirement to be a right. Conversely, the provision of the word "may" did not make it mandatory for the first defendant to give its consent to the application.

[41] It would be correct to say that the consent to be obtained from the first defendant would be subject to whether the applicant had fulfilled the terms and conditions required as found in the Pekeliling Perkhidmatan Bil. 4 Tahun 2003.

[42] This court thereby accepts as settled the proposition of law that an officer of a statutory body such as the plaintiff may opt to retire with the approval of the pensions authority and that no officer has an absolute right to pension.

[43] Be that as it may on the pertinent facts and circumstances surrounding the plaintiff's case, this court noted that the plaintiff had been informed by the first defendant *via* a letter dated 13 June 2014 that while they had received her application for optional retirement it noted that she was still bonded through her scholarship to them. It was further informed to the plaintiff that if she still wished to opt for early retirement, she could do so provided she paid the sum of RM30,000 to allow her to be released from the scholarship bond and that would enable her to leave the service.

[44] In this case, the first defendant confirmed that they received and accepted the sum of RM30,000 paid by the plaintiff to them. Relying on the contents of that letter as far as the plaintiff was concerned having received the said sum, it meant that there was no impediment to her application for optional retirement.

[45] I agree with the counsel for the plaintiff in her submission that it gave rise to a legitimate expectation on the part of the plaintiff that the acceptance of the said sum left her free to go on optional retirement. In her evidence, the plaintiff told the court that she was given the assurance by the first defendant's officers that she merely had to pay the said sum and then she would be free to leave. DW2 and DW3 who gave evidence for the first defendant agreed when challenged that the plaintiff was given the impression that payment of the sum of RM30,000 was the only requirement to be fulfilled in order for her to go on optional retirement. The evidence of the first defendant's witnesses who testified on its behalf did not contradict the plaintiff's position.

[46] In particular the evidence of DW2 who holds the position as the Registrar for the first defendant is as follows:

> Q: Setuju dengan saya bahawa Dr Jumiati hanya perlu bayar RM30,000 bagi tujuan untuk keluar diri dari ikatan kontrak tersebut.
>
> A: Berdasarkan dokumen yang dinyatakan, ya.
>
> Q: Berdasarkan dokumen? Jika tidak berdasarkan dokumen?
>
> A: Itu dalam pengetahuan saya. Maksudnya saya merujuk kepada dokumen.

[47] I am in agreement with the plaintiff's submissions that there is a reasonable basis for the plaintiff to come to the belief that she only had to repay the sum of RM30,000 in order for her to be released from her bond and which would then pave the way for the first defendant to give its consent for her to go on optional retirement. I am of the view that a legitimate expectation on the part of the plaintiff had been created as she had set her heart on taking optional retirement not for any frivolous reasons but for legitimate reasons, being her failing eyesight and health issues.

[48] In the case of *Darahman Ibrahim & Ors v. Majlis Mesyuarat Kerajaan Negeri Perlis & Ors* [2008] 4 CLJ 538; [2008] 4 MLJ 309 the learned High Court Judge had this to say:

> The notion of legitimate expectation is an interesting area of the law. I would, with respect, endorse the approach of Lord Fraser in *Attorney-General of Hong Kong v. Ng Yuen Shiu* [1983] 2 AC 629, especially that part where His Lordship said that: legitimate expectations in this context are capable of including expectations which go beyond enforceable legal rights, provided they have some reasonable basis. His Lordship then proceeded to identify three practical questions underlying all legitimate expectation cases, namely:
>
> (a) To what has the authority committed itself?
>
> (b) Has the authority acted unlawfully in respect of its commitment?
>
> (c) What should the court do about it?

[49] I am of the considered view that the first defendant had given the plaintiff the expectation that it would fulfil its commitment to allow her to go for optional retirement after having represented itself with regard to how the plaintiff ought to pay and release herself from both the bond and the service. I am also of the view that where the first defendant through its representatives had made available to the plaintiff the method in which she could proceed to optional retirement, it would be only reasonable if not perfectly correct that they ought not to reject the plaintiff's application. Here, the plaintiff had agreed to the offer from the first defendant to leave the service upon the payment of RM30,000 and she had duly paid the said sum. The first defendant had not rejected the payment of the said sum and by that conduct the plaintiff was within her right to act upon that acceptance and expect the first defendant to give its consent to release her from her employment. The plaintiff was under the expectation that she could leave the service if she paid the said sum. Furthermore, her own head of department had no objections to her application and had in fact supported the application. In my considered opinion, the representations given by the first defendant's officers, in particular by Dr Shad Faruqi gave rise to a legitimate expectation that the plaintiff's application to go on optional retirement would not be objected to.

[50] The first defendant in their written submissions had alluded to the expectation held by the plaintiff but dismissed it as merely her assumption (tanggapan) only.

[51] Counsel for first defendant referred to the plaintiff's replies under cross-examination:

> DAN: kemudian saya nak rujuk Dr kepada jawapan di F. Memandangkan defendant Pertama atau pekerja-pekerja petugas atau kakitangannya telah menerima bayaran sebanyak RM30,000.00 daripada saya atas dasar bayaran ganti rugi pecah kontrak dan telah tidak membayar gaji plaintiff

sejak Ogos 2014, saya beranggapan bahawa pihak Defendan Pertama telah pun melepaskan saya untuk bersara secara pilihan dan atau telah melepaskan saya daripada perkhidmatan Defendan Pertama. So soalan saya kepada Dr based on jawapan Dr dekat Penyata Saksi ini maksudnya Dr membuat anggapan sendiri lah, maksudnya Dr telah dilepaskan and then telah dibenarkan untuk bersara secara pilihan. Betul ya Dr? This is based on ...

PW1: Ya return RM30,000 ni was made to understand it is relating to what I want to do lah maksudnya I nak bersara lah.

DAN: Maksudnya based on apa anggapan Dr ini, when you pay RM30,000.00 and you dibenarkan lah untuk bersara secara pilihan?

PW1: Iya sebab that is one of the processes for me to bersara, itulah.

[52] Based on the circumstances of the plaintiff's case, this court could not conclude with any certainty that she had no reasonable excuse not to report for work as she had accepted the first defendant's offer and paid the said sum.

[53] Apart from the above, the plaintiff had met and discussed her situation with the first defendant's officers a number of times. She had obtained advise from the officers in regard as to how the problem of her scholarship bond could be overcome. She sent emails to the Registrar of the first defendant and had followed the instructions given to her.

[54] The chronological events give credence to the plaintiff's belief. The plaintiff first applied to go on optional retirement *via* her letter dated 13 December 2013 and requested for the date of retirement to take effect on 1 April 2014. The plaintiff received a reply from the first defendant *via* an email dated 15 January 2014 informing her that she was still tied to her scholarship bond and that she would be notified after UiTM checked her records. It was also conveyed to her that there was a way out of the scholarship bond for her if she paid a compensation *in lieu* of serving out the bond. She was told her application for optional retirement would only be processed after she paid the compensation for breach of her scholarship or if she continues in their service until the expiry of the bond. The same letter also advised her to make a fresh application eight months before the date of the optional retirement would take effect.

[55] On 20 January 2014, the plaintiff personally went to the first defendant's legal department and met with its legal adviser DW4 (Shahrin b Nordin). DW4 assured the plaintiff that he would follow-up with her case and inform the Registrar in regard to the details of her scholarship bond. The plaintiff followed up with another email to the first defendant on 10 February 2014 requesting for confirmation of her situation and what she had to do in regard to the scholarship bond she was tied down to. She received a reply informing her that she was still bonded to the first defendant for a period of seven years and/or she had to pay compensation of RM150,000.

[56] On the advice of the pensions and service division of the first defendant's human resource department, the plaintiff did on 21 February 2014 write again to the first defendant that she wished to reapply for optional retirement to take effect from 31 August 2014 which is the date when she completed her secondment at the Ministry of Higher Learning Malaysia. Her letter dated 21 February 2014 was given the stamp of approval from the dean of the academy of language studies on 12 March 2014. Three months after her second application the plaintiff received a letter dated 21 May 2014 from the jawatankuasa hal ehwal kakitangan UiTM rejecting her application without offering any reasons.

[57] The plaintiff then quickly wrote again on 5 June 2014 to the first defendant's legal department to appeal to them to reconsider the fact that she had completed seven years of service in the employment of the first defendant which entitled her to be freed of her scholarship bond. In the same letter, she also appealed to them to reconsider the amount of compensation so that she could peacefully proceed on with optional retirement.

[58] The first defendant replied on 13 June 2014 and informed her that she had only completed five years and two months of her service under the scholarship bond. The contents of the letter stated that she could leave the service if she paid the first defendant the sum of RM30,000. This is the pivotal letter which gave the plaintiff the impression that if she paid the said sum, she would be released from her bond and be allowed to go on optional retirement.

[59] The plaintiff replied to this letter informing the first defendant that she was willing to pay RM30,000 and inquired if they could deduct the said sum from her gratuity. The first defendant did not reply to her letter until two months later when she received an email stating that she had failed to report for duty to UiTM. In her evidence, the plaintiff stated as follows:

> Saya berasa amat terkejut dengan penerimaan emal daripada Bahagian Saraan dan Perkhidmatan yang menyatakan akan merujuk kes saya kepada Unit Integriti defendant Pertama. Saya telah pada setiap masa material berurusan dengan Defendan Pertama dan/atau pekerja, petugas dan kakitangannya secara terus menerus untuk menyelesaikan isu saraan pilihan saya dan juga telah pun memberi notis bahawa saya tidak akan meneruskan ikatan kontrak Plaintif tersebut pada 30.6.2014 tersebut dan masih menunggu balasan daripada pihak Penasihat Undang-undang berkenaan dengan cadangan bayaran ganti rugi pecah kontrak serta arahan-arahan berkenaan dengan bayaran tersebut namun tiada balasan yang diberikan oleh pihak-pihak tersebut.

[60] The above summary of chronological events is in the view of this court sufficient to show that the plaintiff had communicated closely with the first defendant's officers and they were aware that she was willing to pay the said sum in order to follow through with her plan to retire early.

[61] Furthermore the plaintiff did not receive any salary after 31 August 2014 which gave her the reason to believe that the first defendant had accepted her application.

[62] I agree with the plaintiff's submissions that there was reasonable basis for the plaintiff to believe that the first defendant's only condition for release was for her to pay the sum of RM30,000 and nothing more. The first defendant had committed itself to agree to release her if the said sum was received and the plaintiff had acted on that representation. I am of the view that there were sufficient grounds to invoke the doctrine of legitimate expectation in favour of the plaintiff.

Was The Termination Of The Plaintiff's Service Valid And Proper

[63] It is quite evident that whether the plaintiff's service was validly terminated would involve the question as to whether the first defendant's disciplinary committees complied with the procedures laid down in Act 605.

[64] The first defendant is a statutory body and was established as a university under the University Technology Mara Act 1976. The title and preamble of the UiTM Act 1976 states that it is "an Act to provide for the establishment, maintenance and administration of the Universiti Teknologi Mara". UiTM employees are not "Government servants" and are not part of the public services of the Federation as defined by art. 132(1) of the Federal Constitution.

[65] Being a statutory body, its powers to regulate and discipline its staff and employees are derived from *inter alia* the Statutory Bodies (Discipline and Surcharge) Act 2000.

[66] The disciplinary action to be commenced is found under regs. 23 and 24 of Part III of the Second Schedule of Act 605.

[67] It is provided for that when an officer is missing for seven consecutive working days and cannot be traced that officer can be dismissed without a trial but subject to a couple of conditions. Firstly, the letter sent to the officer must be by personal delivery or by AR Registered Post by the head of department to the officer's last known address. Secondly, the disciplinary committee shall publish a notice in one daily newspaper in Bahasa Malaysia directing the officer to report for duty within seven days. In this case, DW2 admitted that she did not send the reminder letter to the plaintiff report for duty by the above methods. She admitted that she had merely sent it to the plaintiff by email. There was therefore a procedural defect in effecting service of the notice to the plaintiff.

[68] Furthermore, the integrity unit and the staff of the discipline committee did not receive any report from Professor Madya Dr Normah Abdullah who is the plaintiff's head of department complaining of the plaintiff's absence. This is yet again a breach of procedure in taking the disciplinary action against the plaintiff.

[69] The first defendant failed to adhere to the requirements found in reg. 24(1) of Part III of the Second Schedule of Act 605 which requires the head of department to send in a report as soon as possible together with the facts and dates and circumstances of such absence from work as well as any further information to the appropriate disciplinary complaint. The first defendant was under a duty to act fairly. From the documents perused it is noted that the plaintiff's head of department, Professor Madya Norma bt Abdullah had instead of sending the facts, dates and circumstances of the plaintiff's absence from work as was required under the particular regulation had endorsed her support of the letter of application by the plaintiff for optional retirement. The first defendant did not take this fact into consideration but had proceeded to take out disciplinary action against the plaintiff. The letter of support by the plaintiff's head of department showed that that she was fully aware and consented to the plaintiff's reasons why she had not reported for work.

[70] I find that the reason for the plaintiff's absence was clearly explained as she was in the midst of expecting to retire optionally. This information was not something unknown to the first defendant. The officers handling the matter were aware of the plaintiff's reasons for being unable to report for duty.

[71] Furthermore, the payment of RM30,000 being the pre-condition for releasing the plaintiff from her scholarship had been received and accepted by the first defendant before the decision to issue the letter directing her to report back to work. In addition, the last salary paid to the plaintiff was in August 2014. Thereafter the plaintiff did not receive any emolument. This further strengthened the plaintiff's argument that she was given the legitimate expectation that she was free to go on optional retirement.

[72] It was strenuously contended by counsel on behalf of the plaintiff that the plaintiff had a reasonable excuse to not report for work as she had opted and agreed to the offer from the first defendant to leave the service upon the payment of RM30,000. This evidence is not disputed by the first defendant's witnesses when cross-examination. In evidence DW4, the legal advisor for first defendant stated as follows:

> Q: Baik. Setuju dengan saya bahawa, segala proses permohonan saraan pilihan, kandungan sebab kenapa beliau ingin bersara secara pilihan, bersara awal, apa yang beliau perlu bayar RM30,000 dan sebagainya, segala kandungan ataupun maklumat ini berada dalam pengetahuan pihak UiTM sebelum mereka menghantar notis secara email untuk beliau melaporkan diri untuk bertugas.
>
> A: Ya.
>
> Q: Jadi, saya katakan kepada kamu, walaupun pihak UiTM tahu bahawa beliau mengalami masalah kesihatan, walaupun beliau mengalami masalah peribadi dan beliau ingin mendapatkan

A persaraan pilihan, namun pihak UiTM masih menghantar surat untuk beliau melaporkan diri untuk bertugas dan seterusnya terus menghantar tindakan tatatertib kepada beliau tanpa mengambil kira langsung sebab yang munasabah yang beliau telah letakkan secara rayuan, secara pemberitahuan dan juga sebelum kamu keluarkan notis tersebut. Sebelum pihak UiTM mengeluarkan notis untuk B beliau melaporkan diri, pihak UiTM sudah tahu kenapa beliau tidak hadirkan diri. Setuju atau tidak?

A: Ya, tahu.

[73] As I have stressed earlier, in this matter the first defendant had prior C to the above actions, sent the plaintiff a letter dated 13 June 2014. The plaintiff acted upon the contents of the said letter. The part of the letter which is relevant to the issue in question is at para. 2(e) and it reads as follows:

(e) Oleh yang demikian, sekiranya Dr meninggalkan perkhidmatan UiTM sebelum ikatan di bawah Lanjutan 1 dan Lanjutan 2 disempurnakan, D maka Dr hanya bertanggungjawab untuk ganti rugi pecah kontrak sebanyak RM30,000.00 di bawah perjanjian Lanjutan 1 dan Lanjutan 2 sahaja.

[74] In her reply dated 30 June 2014, the plaintiff confirmed she was prepared to pay RM30,000 to release her from her scholarship bond. She had E stated in para. 3 as follows:

3. Memandangkan saya akan tetap meneruskan proses permohonan persaraan pilihan, saya dengan ini memberi notis bahawa saya tidak akan menyempurnakan tempoh ikatan kontrak perkhidmatan bagi perjanjian Lanjutan 1 dan Lanjutan 2. Saya juga sedia maklum akan tanggungjawab saya untuk membayar ganti rugi pecah kontrak sebanyak RM30,000 F berikutan keputusan saya.

[75] It was put to the first defendant's witnesses that the plaintiff had adhered to the terms of the said letter and they agreed. Reference is made again to the evidence of DW2 who unhesitatingly agreed with the contents of the letter dated 13 June 2014. G

[76] The evidence of DW3 supported the testimony of DW2. Both DW2 and DW3 seemed to support the plaintiff's version that she had been informed by Dr Shad Faruqi, the legal advisor of the university that she could leave the service if she agreed to pay the sum of RM30,000. The H evidence of DW3 is reproduced as follows:

Q: Saya katakan kepada kamu bahawa Dr Shad Faruqi, Penasihat Undang-undang universiti, telah memberitahu sekiranya Dr meninggalkan perkhidmatan UiTM sebelum ikatan, beliau bertanggungjawab untuk membayar ganti rugi pecah kontrak sebanyak RM30,000. Setuju. I

A: Ya, betul.

Q: So, sekiranya beliau telah bayar RM30,000, beliau boleh meninggalkan perkhidmatan. Saya cadangkan itu yang diperkatakan oleh pihak UiTM melalui Dr Shad Faruqi. Sekiranya Dr meninggalkan perkhidmatan UiTM sebelum ikatan di bawah lanjutan 1 dan lanjutan 2 disempurnakan, maka Dr hanya bertanggungjawab untuk gantirugi pecah kontrak sebanyak RM30,000.

A: Ya.

Q: Saya cadangkan kepada kamu, itu yang diberitahu oleh UiTM kepada Dr Jumiati. Setuju atau tidak?

A: Itulah kandungan suratnya.

Q: Setuju?

A: Setuju.

[77] En Hafiz b Ramlee (DW5) who is the head of the integrity unit in UiTM had agreed in cross-examination to the questions put to him by learned counsel for the plaintiff as follows:

Q: Berdasarkan dokumen ini, kalau tak faham boleh baca sekejap. Saya cadangkan pada bahagian (e), kalau Dr Jumiati nak tinggalkan perkhidmatan UiTM, dia perlu bayar RM30,000 untuk pecah kontrak. Setuju atau tidak?

A: Betul

Q: Berdasarkan perenggan (e) tersebut yang dihantar oleh UiTM, kalau Dr Jumiati nak meninggalkan perkhidmatan dengan UiTM, dia perlu bayar RM30,000 untuk pecah kontraknya. Betul atau tidak? Berdasarkan dokumen (e) tersebut.

A: Kalau berdasarkkan dokumen, ya.

Q: Baik. Saya nak tanya En Hafiz setuju atau tidak Dr bayar RM30,000 itu sebelum pertuduhan tindakan tatatertib. Setuju atau tidak?

A: Setuju.

Q: Setuju atau tidak yang pembayaran tersebut telah pun diketahui oleh UiTM. Setuju atau tidak?

A: Berdasarkan dokumen, setuju.

[78] There is ample evidence to show that the directive to the plaintiff to report back for work were not properly sent out to the plaintiff. Regulation 25 of the Statutory Bodies (Discipline and Surcharge) Act 2000 provides that where if the officer is missing for seven consecutive working days and cannot be traced can be dismissed without a trial but subject to a couple of procedures:

(i) the letter directing the plaintiff to report back for duty must be sent by personal delivery or AR registered post by the head of department to the officer's last known address;

A (ii) the disciplinary committee shall publish a notice in one daily newspaper in Bahasa Malaysia requiring the officer to report for duty within seven days.

[79] The first defendant's witness, DW2 agreed that she had merely sent an email the letter directing the plaintiff to report back for work. The plaintiff B was not properly served with the notices directing her to report back for duty.

[80] DW2 admitted that the first defendant went ahead with taking disciplinary action against the plaintiff even though they did not receive any complain or report from her own head of department. C

[81] Counsel for the plaintiff contended that the first defendant had erred in its finding that the plaintiff had breached reg. 23 of Part III of the Second Schedule of Act 605 as they had not taken into consideration her reasons which were valid and reasonable.

D **[82]** Counsel for the plaintiff raised a valid argument when it was pointed out that the first defendant had failed to furnish any evidence of having sent a report from the plaintiff's head of department. Regulation 24(1) of Part III of the Second Schedule of Act 605 makes it mandatory that the head of department of the officer must send in a report as soon as possible together E with the facts and dates and circumstances of such absence and any further information to the appropriate disciplinary complaint.

[83] There was evidence which showed that the plaintiff's head of department not only did not send such a report but she had endorsed her support to the letter of application by the plaintiff for optional retirement. F I agree with counsel for the plaintiff that this essentially meant that the plaintiff's head of department was fully aware and had no objections as to why the plaintiff did not report for work.

[84] The plaintiff's absence was clearly explained to the officers of the first defendant and they were fully aware of her reasons for applying for optional G retirement. In spite of that the first defendant carried out the drastic step of taking disciplinary action against the plaintiff in an unreasonable manner.

[85] The other issue which I find necessary to address is the plaintiff's complaint that she was denied of her statutory right to appeal. After receiving H the directive to report back for duty, the plaintiff had immediately replied on 29 September 2014 explaining her reasons for her inability to do so. There was no reply to her letter. Instead on 16 October 2014, she received an email dated 3 October 2014 informing her she had breached reg. 23 Part III and reg. 3(2)(g) and (i), Part 2, Second Schedule of the 605 Act due to her failure to report for duty. The plaintiff contended that this email was I addressed to the Malaysia Students Education Section of the Malaysian Consulate in Australia. The first defendant ought to have known that the plaintiff was no longer resident in Australia and had returned to Malaysia.

Hence there was a delay in the receipt of that letter. The plaintiff replied on 21 October 2014 explaining her position and reiterating again her willingness to pay the said sum for the breach of the scholarship bond. The plaintiff followed that up with payment on 10 December 2014 which was received. Two months later on 13 February 2015, the first defendant wrote to the plaintiff acknowledging receipt of the payment but stated that they could not process her application for optional retirement as she was facing disciplinary action for her failure to report for duty and that she had not cleared the SPRM integrity threshold.

[86] A meeting was arranged on 22 April 2015 between the plaintiff and representatives of the first defendant. It could not however resolve the issue as the first defendant was adamant about waiting for the disciplinary committee to sit and decide on the matter.

[87] Six months later on 5 October 2015, the plaintiff was issued with a show cause letter settle for failure to report for work on 31 August 2014 and for being absence from work with leave or without permission or without any reasonable cause from 2 September 2014. The plaintiff was accorded 21 days to reply to the said show cause letter. The plaintiff in her evidence explained:

> Saya amat kecewa kerana jawatankuasa tersebut dalam melakukan pertuduhan tidak mengambil kira surat-surat yang telah saya berikan sejak dari 13.12.2013 lagi mahupun kepada notis-notis yang telah saya berikan berkenaan pendirian saya untuk tidak meneruskan kontrak dengan Defendan Pertama mahupun bayaran RM30,000 yang telah pihak Defendan Pertama terima dan ambil sebagai ganti rugi perlanggaran kontrak tersebut.

[88] The plaintiff stated that she sent a representation letter on 26 October 215 to explain her position which was *inter alia* that she had relied on the representations made by the first defendant's officers who told her that she could go for optional retirement on condition if she paid the said sum and forwarded receipt of payment to them. I reproduce here in part her representations as follows:

> (a) Pihak Defendan Pertama dan/atau pekerja, petugas dan kakitangannya telah pada 15.1.2014 menyatakan bahawa saya masih terikat dengan kontrak dan sekiranya ingin bersara secara pilihan, saya perlu menyerahkan resit bayaran ganti rugi pecah kontrak.
>
> (b) Defendan Pertama dan/atau pekerja, petugas dan kakitangannya telah pada 21.5.2014 menolak permohonan plaintiff tanpa memberi sebarang alasan.
>
> (c) Defendan Pertama dan/atau pekerja, petugas dan kakitangannya telah melalui surat bertarikh 13.6.2014 menyatakan sekiranya saya ingin bersara secara pilihan, saya perlu membayar ganti rugi pecah kontrak bagi tempoh Lanjutan 1 dan Lanjutan 2 sebanyak RM30,000.

(d) plaintiff telah berkali-kali menyatakan hasrat serta memberikan notis kepada Defendan Pertama bahawa saya tidak akan meneruskan ikatan kontrak dan bersedia untuk membayar RM30,000 tersebut.

(e) Memandangkan Defendan Pertama dan/atau pekerja, petugas dan kakitangannya tidak membalas kepada surat-surat saya sejak Jun 2012 berkenaan dengan cara bayaran RM30,000 tersebut, saya telah melalui peguamcara membuat bayaran sebanyak RM30,000 pada 10.12.2014.

(f) Memandangkan Defendan Pertama dan/atau pekerja, petugas dan kakitangannya telah menerima bayaran sebanyak RM30,000 daripada saya atas dasar bayaran ganti rugi pecah kontrak dan telah tidak membayar gaji Plaintif sejak Ogos 2014, saya beranggapan bahawa pihak Defendan Pertama telahpun melepaskan saya untuk bersara secara pilihan dan/atau melepaskan saya daripada perkhidmatan Defendan Pertama.

(g) Saya telah sejak Jun 2014 ingin menyelesaikan perkara ini namun pihak Defendan Pertama dan/atau pekerja, petugas dan kakitangannya yang melengah-lengahkan proses sehingga perkara ini terbawa sehingga ke tarikh September 2014. Pihak Penasihat Undang-undang sendiri telah menyatakan bahawa sekiranya saya beringinan untuk melanggar kontrak biasiswa, saya hanya perlu membayar RM30,000 sahaja. Isu berkenaan dengan tapisan keutuhan SPRM tidak pernah dibangkit langsung oleh Defendan Pertama. Tindakan Defendan Pertama melengah-lengahkan perkara ini secara terang memprejudiskan saya sehingga menyebabkan saya terpaksa menghadapi pertuduhan ini.

[89] The disciplinary committee refused to accept her reasons and found her guilty. She was terminated from her service with effect from 18 December 2015. She was given 14 days to appeal against the said decision. The plaintiff only received the decision of the disciplinary committee on 29 January 2016 as it had been sent to the wrong address. By that time the 14 days dateline had long expired and the plaintiff thought that she had lost her chance to appeal the said decision.

[90] However, the plaintiff later learned that a meeting was held on 21 July 2016 between representatives from Jabatan Perkhidmatan Awam (JPA), SPRM and the first defendant. This meeting was chaired by the then director of Bahagian Pasca Perkhidmatan JPA after having received an appeal from the plaintiff.

[91] In the minutes, several findings and/or conclusions were made including the fact that the plaintiff did not appeal earlier because she may have not received the decision as the record showed that the plaintiff had not personally received the decision of the disciplinary committee.

[92] In this matter the first defendant did not comply with the suggestions reached at the meeting with the JPA. They did not notify the plaintiff that she could appeal against the decision to terminate her service.

[93] The plaintiff found out about the decision made at the meeting and immediately wrote to the first defendant on 26 September 2016 and appealed to them to reconsider her dismissal.

[94] However, eight months later the plaintiff was informed that the disciplinary appeal committee had confirmed the earlier decision on 18 December 2015 to terminate her service.

[95] Regulation 23 under Part II of the Third Schedule of Act 605 states:

> As soon a practicable after making its decision under para. 22 on an appeal made by an officer, the disciplinary appeal committee shall notify the officer of that decision.

[96] The plaintiff had not been notified of the decision of the disciplinary appeal committee immediately. There was thus non-compliance with reg. 23 under Part II of the Third Schedule.

[97] There is also a doubt created as to whether the disciplinary appeal committee had been appraised fully with regard to the circumstances of the plaintiff's case especially in regard to the proposals arrived at in the meeting between the JPA and the first defendant.

[98] I agree with counsel for the plaintiff that there was a considerable delay in conveying the decision to the plaintiff's last appeal and this had contradicted the said Regulation. Clearly, the plaintiff had given reasons for her failure to report back for work. She had given justification and the disciplinary committee had failed to consider the reasons. There was a breach of natural justice in subjecting the plaintiff to the harshest punishment when she had submitted reasonable cause for her failure to report for work. The defence of legitimate expectation was not taken into account at all by the disciplinary committee. In light of the foregoing, I was of the considered view that the plaintiff had proven she had reasonable cause for her failure to report for work and for her absence from work. Having found that there was reasonable cause for her absence, this court was of the view that the dismissal by the first plaintiff was wrongful and therefore the plaintiff is entitled to seek a declaration that the decision of the disciplinary appeals committee was invalid and of no effect. Since the first defendant's officers had given her reason to believe that her application for optional retirement would be processed if she paid the said sum, the plaintiff ought to be allowed to opt for early retirement. The first defendant is estopped from refusing to process the application as the plaintiff had complied with the condition given through its letter dated 13 June 2014. The court finds that the letter dated 21 May 2014 by the first defendant refusing her application for optional retirement was wrong and invalid as it did not give any reasons for the refusal.

[99] In the case of *Mohamad Hassan Zakaria v. Universiti Teknologi Malaysia* [2017] 10 CLJ 36 the Court of Appeal decided as follows:

A [60] We are of the view that where the statutory authority makes available to its employees the option to retire early, it is only reasonable if not of perfectly logical sense that any rejection of any application to exercise that option must be explained; more so when it is made after the basic and only requirements have unquestionably been met. The very nature and circumstances of the application, that is, to opt to retire early from the
B service of the respondent, mandates a reading into s. 12(1) an implied duty to provide reason for withholding of consent to that option. Otherwise that option, granted under statute and reinforced by the service circular, is as good as none ...

[100] The court also accepted the plaintiff's argument that the first defendant
C had failed to consider the second defendant's decision in the meeting *ie*, perbincangan berkaitan rayuan persaraan pilihan Dr Jumiati binti Ismail to allow the plaintiff to send an appeal against the decision of the disciplinary appeal committee's decision. The second defendant contended that this was merely a proposal (cadangan) and not a directive. However, clearly the view
D of the JPA at para. 3.3 carried some weight in consideration of the sentence to be meted out to the plaintiff. Paragraph 3.1 carried the following suggestion:

Selain itu, mesyuarat mengambil maklum tindakan tatatertib terhadap beliau mungkin dikurangkan jika beliau membuat rayuan. Ini juga
E bertujuan supaya beliau masih berpeluang untuk bersara dan menikmati faedah persaraan. Sekiranyanya tiada rayuan dibuat, maka keputusan tatatertib sebelum ini dianggap kekal.

Para 3.2: Sehubungan itu, mesyuarat telah bersetuju untuk mencadangkan supaya UiTM memberi peluang kepada Dr Jumiati Ismail membuat rayuan
F terhadap keputusan kes tatatertib yang telah dikeluarkan kepada beliau ...

3.3 Mesyuarat juga bersetuju supaya pihak UiTM dicadangkan membuka semula kes tatatertib Dr Jumiati Ismail dengan syarat beliau membuat rayuan semula.

[101] Although it was argued by learned counsel for the second defendant
G that the above were merely suggestions, it had to be borne in mind that the suggestions had come from no less than the JPA and thus that equalled almost to a directive to be given due weight and consideration. The minutes of the meeting also gave the suggestion that the first defendant ought to consider allowing the plaintiff to appeal in order to have the opportunity to retire and
H receive a pension.

[102] Apart from the inordinate delay in informing the plaintiff of the outcome of the appeal, the disciplinary appeals committee did not provide reasons for rejecting her appeal. The concept of fairness required that the plaintiff be provided with reasons so that the right of appeal may be properly
I and meaningfully exercised (see *Perbadanan Pengurusan Trellises & Ors v. Datuk Bandar Kuala Lumpur & Ors* [2021] 2 CLJ 808). This is so even despite the

absence of express statutory obligation to state reasons. To quote Justice Zainun Ali JCA (as she then was) in the case of *Datuk Justine Jinggut v. Pendaftar Pertubuhan* [2012] 1 CLJ 825:

> ... thus if no reason is given by the respondent, it is open for this court to conclude that he had no good reason in as much as it is open for us to conclude that the respondent had not exercised his discretion in accordance with the law.

[103] The question is whether the plaintiff is entitled to the remedies for declarations as claimed in the amended statement of claim. The fact remains that the first defendant had given the plaintiff the legitimate expectation that her application for optional retirement would be allowed and she had acted on it. The first defendant had breached its statutory duty by its non-compliance with the procedures as laid down in Act 605. There were a number of procedural improprieties committed by the first defendant's officers. Dismissal is a very harsh punishment, at the very least the first defendant could have considered the merits of the plaintiff's reasons for wanting to go on optional retirement. The first defendant had given the plaintiff the hope and expectation that they would not object to her application if she paid the said sum of money. The plaintiff deserved to be treated more circumspectly as she had given 34 years of service to the first defendant and more if not for her failing health and personal problems. The first defendant's officers were well aware of her health problems since she was in communication with them and had even gone personally several times to seek their advice on the best way to settle her case. The plaintiff had done her duty to the nation when she was seconded to the Education Malaysia Australia at the Consulate of Malaysia in Australia. The defendants did not dispute or deny that she had made notable contribution to the country during her tenure there. The plaintiff thus has a legitimate right to seek the declaratory reliefs that she sought for.

[104] However, this court is of the view that its powers are limited to the jurisdiction to declare that the decision of the staff disciplinary committee on 18 December 2015 and the disciplinary appeals committee dated 1 June 2017 was invalid and improper. Section 41 of the Specific Relief Act 1950 (Act 137) makes provisions for a declaratory decree. It provides that any person entitled to any "legal character" or to any right as to any property, may institute a suit against any person denying or interested to deny his title to the "character" or "right". In the Federal Court case of *Dato' Menteri Othman Baginda & Anor v. Dato' Ombi Syed Alwi Syed Idrus* [1984] 1 CLJ 28; [1984] 1 CLJ (Rep) 98 it was explained that the remedy of declaration can be used in a "wide range of circumstances" and in a "wide variety of cases in terms of subject matter."

[105] In *Dato' Raja Ideris Raja Ahmad & Ors v. Teng Chang Khim & Ors* [2012] 2 CLJ 288 the Court of Appeal pronounced as follows:

> [28] A declaratory judgment merely states the rights or legal position of the parties as they stand without altering them in any way: see *Gan Hwa Kian & Anor v. Shencourt Sdn Bhd* [2007] 3 CLJ 538. 'A declaration can be used to ascertain and determine the legal rights of parties or to determine a point of law': *Brett Andrew Macnamara v. Kam Lee Kuan* [2008] 7 CLJ 625; [2008] 2 MLJ 450 at 459 per Balia Yusof J (now JCA). By virtue of s. 41 and O. 15 r. 16, the court's jurisdiction to make a declaratory order is unlimited, subject only to its own discretion. The court has power to grant a declaration irrespective of whether an application has a cause of action or not and even if a cause of action does not exist at the time of the filing of an application: see eg, *Tan Beng Sooi v. Penolong Kanan Pendaftar (United Merchant Finance Bhd, Intervener)* [1995] 2 CLJ 846; *BSN Commercial Bank (M) Bhd v. Pentadbir Tanah Daerah, Mersing* [1997] 3 CLJ Supp 1; and *Cekal Berjasa Sdn Bhd v. Tenaga Nasional Bhd* [2006] 8 CLJ 69; [2006] 4 MLJ 284 at 294, per Abdul Malik Ishak J (now JCA).
>
> [29] The jurisdiction to make a declaration under the rule is not confined to cases in which the plaintiff has a complete and subsisting cause of action: *Guaranty Trust Co of New York v. Hannay* [1915] 2 KB 536, CA (Eng); *Dewan Singh v. M Thynappa Ltd & Yeo Teck Chiang* [1939] 1 LNS 20; Hj *Hussin Hj Ali & Ors v. Datuk Haji Mohamed Yaacob & Other Cases* [1983] 2 CLJ 68; [1983] CLJ (Rep) 165, FC; *Karpal Singh v. Sultan of Selangor* [1987] 2 CLJ 342; [1987] CLJ (Rep) 686; and *Tengku Mariam Tengku Sri Wa Raja & Anor v. Commissioner for Religious Affairs, Trengganu & Ors* [1968] 3 LNS 1

[106] In light of the fact that the court has found that the refusal to consent to the plaintiff's application for optional retirement to be invalid the plaintiff is therefore entitled to the declaration that she be given a pension, gratuity and golden handshake calculated as if the plaintiff had retired on 31 August 2014.

[107] For all of the above reasons, this court allowed the plaintiff's claim in prayers 56(b), (c), (d), (h) and (i) of the amended statement of claim. Prayer 56(a) was allowed only to the extent that a declaration be granted to declare that the decision of the jawatankuasa tatatertib kakitangan dated 18 December 2015 and jawatankuasa rayuan tatatertib kakitangan dated 1 June 2017 are invalid.